execute a registrable transfer in the future. The vendor does not owe the purchaser any money but he does owe him a transfer. The purchaser is in this sense a creditor until completion.

If the purchase money is not paid in full there are mutual credits and debits. The vendor is a creditor for the balance and the purchaser is a creditor for the conveyance. Annaratnam was substantially in this position; she was a creditor of the estate for a conveyance. She was a debtor for the amount of the charge.

The Collector of Estate Duty has a separate point of view of his own. He is allowed by law to levy duty on the registered interest in land, even though the deceased had no beneficial interest, but this caused no difficulty; it merely means that the schedule of assets and liabilities for his purpose is different from that in the petition.

For the reason stated I am of the opinion that an unregistered purchaser, even though no money debt is outstanding, is a creditor within the meaning of section 24(iii) of the Probate and Administration Enactment, Chapter 8 and, the next-of-kin having renounced, letters of administration may be granted to her accordingly.

The word "creditor" must have the same meaning in section 179. Where a deceased proprietor has sold his land and his family are untraceable or do not apply for distribution the purchaser may apply and the Collector can deal with the case on its merits. I have lately so ruled on a reference by one of the Collectors for Selangor but as the point of law was exactly the same it is not necessary to deliver a separate judgment.

Order accordingly.

KEE BAN CHENG v. TABAYASHI TOYOJI AND ANOR.

[Orig. Civ. Juris. (Jobling, J.) March 29, 1951]

[Penang — Civil Suit No. 72 of 1950]

Dealings in Land (Occupation Period) Ordinance, 1949 s. 12 — Sale under duress — Vendor and Purchaser — Constructive Notice — Conveyancing and Law of Property Ordinance (Cap. 118), s. 70.

In this case the plaintiff sold a plot of land with a dwelling house thereon, to the first defendant for the sum of $10,000/- Japanese currency on 1st November, 1943. In July, 1945 the first defendant agreed to sell the premises for $30,000/- Japanese currency to one Toh Chooi Nai who in turn agreed to sell them to the second defendant for $5,000/- Malayan currency. On 26th July, 1945 an agreement for sale was entered into by which, at the request of Toh Chooi Nai, the first defendant agreed to sell the premises to the second defendant and later on 26th August, 1945 a deed of conveyance transferring the property to the second defendant was executed and registered in the Registry of Deeds.

The plaintiff in this case sought to set aside a conveyance dated 1st November, 1943 between himself and the first defendant on the ground that it was obtained by duress and asked for an order for delivery of the premises and the title deeds relating thereto by the second defendant in whose possession they were.

The two issues raised by the facts were first, whether the sale by the plaintiff to the first defendant was made under duress and should be set aside and secondly, if that sale is set aside was the second defendant a **bona fide** purchaser for value without notice and therefore entitled to possession of the premises against the plaintiff.

Held, (1) that on the evidence before the Court that the sale to first defendant was in consequence of the threats by him; and (2) that the circumstances existing in Malaya in July, 1945 were such that should have put any solicitor upon such inquiry as would have led to the discovery that the property would have been improperly obtained and therefore that the purchaser, by reason of the fact that the knowledge of the defect in the title should have come to the notice of the Solicitor, was not a **bona fide** purchaser without notice.

Case referred to :—

(1) *Bailey v. Barnes* (1894) 1 Ch. p. 25.

WITNESS ACTION.

C. D. D Hogan for the plaintiff.

T. E. Conaghan and *Mrs. Oon* for the second defendant.

The first defendant was not served.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Jobling, J. : — In this Suit the plaintiff seeks to set aside a conveyance dated 1st November, 1943 between himself and the first defendant on the ground that it was obtained by duress and asks for an order for delivery of the premises and the title deeds relating thereto by the second defendant in whose possession they are.

It appears from the evidence that plaintiff sold the property in question, a plot of land with a dwelling house thereon, to the first defendant for the sum of $10,000/- Japanese currency on 1st November, 1943 and that in July, 1945 the first defendant agreed to sell the premises for $30,000/- Japanese currency to one Toh Chooi Nai who in turn agreed to sell them to the second defendant for $5,000/- Malayan currency. On 26th July, 1945 an agreement for sale was entered into by which, at the request of Toh Chooi Nai, the first defendant agreed to sell the premises to the second defendant and later on 26th August, 1945 a deed of conveyance transferring the property to the second defendant was executed and registered in the Registry of Deeds. This conveyance being executed after 12th August, 1945 is void under Section 12 of the Dealings in Land (Occupation Period) Ordinance, 1949. The

scond defendant therefore relies upon the agreement for sale dated 26th July, 1945.

The two issues raised by these facts are first, whether the sale by plaintiff to first defendant was made under duress and should be set aside and secondly, if that sale is set aside was the second defendant a *bona fide* purchaser for value without notice and therefore entitled to possession of the premises against the plaintiff.

On the first issue as to the sale being a forced one the plaintiff gave evidence that on 1st November, 1943 two Japanese, one of whom was the first defendant, came to his estate and asked him to produce his title deeds. First defendant then said he wanted to buy the property and when plaintiff refused to sell he threatened plaintiff with being taken before the Japanese Military Police and having his head chopped off. In consequence of this threat the plaintiff agreed to sell the property for $10,000/-.

The first defendant and his companion and plaintiff and one Toh Kim Liat went by car to Butterworth and afterwards to the office of the lawyer Mr. Goh to have the conveyance prepared. The plaintiff said he had no time to change his clothes and went in his working clothes which were dirty and clogs. Mr. Goh told them a permit from the authorities was necessary and first defendant went off to get it leaving plaintiff and Mr. Goh together. Plaintiff informed Mr. Goh that first defendant was forcing him to sell the land. Later first defendant returned with the permit and the conveyance was executed.

Mr. Goh gave evidence that plaintiff came to his office with a Japanese on 1st November, 1943 in dirty clothes and wearing clogs. Plaintiff appeared frightened and when the Japanese left to get the permit Mr. Goh asked plaintiff why he was selling the land for $10,000/- when he had had an offer previously of $15,000/-. Mr. Goh confirms plaintiff's evidence that he said in reply that he was being forced to sell.

Contrary to this account of the transaction Toh Kim Liat gave evidence that he was present when the first defendant and another Japanese came to plaintiff's estate and that although plaintiff at first refused to sell he later agreed to do so. Toh Kim Liat says he heard no threat and he denies Mr. Goh's evidence that plaintiff stayed in his office when first defendant went for the permit. He says that he and plaintiff and first defendant all went to get the permit and that plaintiff was wearing clean clothes and ordinary Chinese slippers and not clogs. But he admits that in response to first defendant's request for sale of the property plaintiff said he had already turned down an offer of $30,000/- and offered to let the first defendant live in the place rent free.

This witness was a most unsatisfactory witness and I have no hesitation in disregarding everything he said in contradiction of Mr. Goh's evidence. I accept the plaintiff's and Mr. Goh's evidence and find that the sale to first defendant was in consequence of threats by him.

On the second issue the agreement for sale dated 26th July, 1945 is relied upon to show that second defendant was a *bona fide* purchaser for value without notice and we have the evidence of the second defendant and of Mrs. Oon, her lawyer. It is clear that second defendant left the matter in the hands of her lawyer and had no reason to suspect that the title might be defective. But the knowledge of her solicitor must be imputed to the second defendant and the facts within Mrs. Oon's knowledge must be considered.

Mrs. Oon stated, and I accept it, that she regarded the transaction as an ordinary one and saw no reason to inquire into the manner in which the property had been acquired by the person then in legal possession. She says that she had been practising in Butterworth and Penang for over two years during the Japanese occupation and had only had one transaction in which Japanese were involved. This was a mortgage of some property which was subsequently reconveyed and followed the normal course of such transactions.

Mrs. Oon knew that the last purchaser of the property was a Japanese and said the Japanese were regarded as enemies but insisted that this did not raise any suspicion in her mind that the property might have been improperly obtained. She had heard of one case in which the Japanese purchaser acted fairly to a vendor and apparently these were the only two transactions involving Japanese which had come to her knowledge.

Mr. Goh, whose evidence was taken *de bene esse*, does not go further than saying that he knew some of the land transactions with the Japanese were not voluntary and that he was afraid of the Japanese. But the plaintiff's evidence is that everyone was afraid of the Japanese and that it was the talk of the town that many people were complaining about their land being taken away by force by the Japanese.

This evidence is not specifically contradicted by Mrs. Oon; it is supported to some extent by Mr. Goh's evidence and the probabilities point to it being correct. I therefore accept it as true.

By Section 70 of the Conveyancing and Law of Property Ordinance (Cap. 118) a purchaser can be said to have notice of any fact if it "would have come to the knowledge of his solicitor or other agent as such if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent". And in *Bailey v. Barnes*[1], Lindley, L.J. at p. 35 held that the expression "ought reasonably" must mean ought as a matter of prudence, having regard to what is usually done by men of business under similar circumstances.

The question is therefore were the circumstances such as ought reasonably to have put Mrs. Oon upon such inquiry as would have led to her discovering that the property had been improperly obtained.

In my opinion the circumstances existing in Malaya in July, 1945 were such that should have put any solicitor upon such inquiry and I find therefore that the purchaser by reason of the fact that knowledge of the defect in title should have come to the notice of her solicitor was not a *bona fide* purchaser without notice.

In view of this finding it will not be necessary to consider the other submission made by Mr. Hogan namely, that the agreement of July, 1945 is merged in the conveyance of August, 1945 which is void under Section 12 of Ordinance 40 of 1949 and for that reason cannot be relied upon by second defendant.

In consequence of the findings set out above I order as follows :—

(1) that the conveyance dated 1st November, 2603 (1943) is null and void and is set aside;

(2) that the Register of Deeds, Penang be rectified by the cancellation of all entries relating to the said conveyance;

(3) that the caveat Notice No. 97/6 dated 24th October, 1946 filed by the second defendant be discharged and vacated; and

(4) that possession of the property in question and the title deeds relating thereto be delivered to plaintiff.

The plaintiff has received $10,000/- Japanese currency for his property and must refund the amount as revalued at first November, 1943 to the second defendant. But the second defendant must account to the plainitff for mesne profits from the time the property has been in her possession. The mesne profits to be ascertained by an enquiry before the Registrar.

Costs to plaintiff.

Order accordingly.

PUBLIC PROSECUTOR v. TAN CHIN SENG.

[App. Crim. Juris. (Taylor, J.) March 30, 1951]

[Selangor — Criminal Appeal No. 85 of 1950]

Forfeiture — Contraband in hire purchase car — forfeiture proceedings — "innocent" — meaning of.

When a contraband offence has been proved and application is made for forfeiture of a vehicle the registered owner is the proper respondent and he should be required to shew cause unless he has in fact no interest in the property.

Any other person claiming a proprietory interest, e.g. a hire purchase vendor, may appear and be heard.

Where there is more than one owner, the vehicle should not be released unless all the owners are not only innocent of complicity in the actual offence but innocent of connivance or giving facilities.

Case referred to :—

(1) *Leggate v. Brown* (1950) 2 All E.R. 564.

CRIMINAL APPEAL from Sessions Court, Klang.

T. R. Hepworth for the appellant, the Public Prosecutor.

N. A. Marjoribanks for the respondent, the registered owner.

P. J. D. Regester for the interveners (the hire purchase vendors).

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Taylor, J. : —A man named Tan Chin Teck was convicted in the Sessions Court at Klang of smuggling a considerable quantity of opium which was found in a specially contrived compartment concealed under the rear seat of a passenger motor car. The car was registered in the name of a relative of the accused named Tan Chin Seng and after the conviction a notice was issued requiring him to show cause why the car should not be forfeited. At the hearing separate counsel appeared for Tan Chin Seng and for the Motor Traders Finance Company, Limited, who claimed to be the owners of the car by virtue of a hire-purchase agreement on which instalments were said to be in arrears. The record is not clear or well-arranged but it appears that the Company were treated as the owners and that Tan Chin Seng was never in fact called upon to shew cause although the proceeding had been instituted against him. The President ordered the car to be returned to the Company. The Public Prosecutor appealed.

The first point taken was that the Company were not properly before the Sessions Court. It is true that they were not served and it was not necessary that they should be served. Where the Police, in a traffic case